



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1996

The Honorable Jack Skeen, Jr.
Criminal District Attorney
Smith County Courthouse
Tyler, Texas 75702

Letter Opinion No. LO96-033

Re: Whether a person may simultaneously be employed as an unpaid peace officer and as a community supervision officer (ID# 34273)

Dear Mr. Skeen:

You ask "whether a Community Supervision Officer can be appointed by a law enforcement agency to be an unpaid, permanent Peace Officer and still be empowered to perform duties of both positions." You explain you are asking about community supervision officers who have obtained peace officer licenses from the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). See Gov't Code § 415.051 (agency or governmental entity may not appoint peace officer unless he is licensed by TCLEOSE). See also Code Crim. Proc. art. 2.12 (defining "peace officers").

Government Code chapter 76 directs the district judges trying criminal cases in each judicial district to establish a community supervision and corrections department (a "CSCD"), Gov't Code § 76.002, and to appoint a department director who "shall employ a sufficient number of officers and other employees,"¹ *id.* § 76.004. Section 76.005 provides standards, including requirements as to education and work experience, for officers thus employed "who supervise[] defendants placed on community supervision"—the kinds of community supervision officers we assume you are asking about. Subsection (c) of section 76.005 provides: "A person employed as a peace officer is not eligible for appointment as an officer under this section."

You appear to suggest that the subsection (c) prohibition would not apply in the situation you ask about because the peace officer "appointments would be unpaid" and the individuals would "remain employed by the CSCD." In our opinion, subsection (c) prohibits a person's simultaneously being employed as a peace officer, whether paid or not, and as a community supervision officer. We do not believe that the term "employed" as used in subsection (c) necessarily signifies that the person employed has to be compensated. Here, the concern behind the subsection (c) prohibition appears to be

¹The referenced provisions in chapter 76 Government Code were recently transferred there from article 42.131, Code of Criminal Procedure. Act of April 25, 1995, 74th Leg., R.S., ch. 76, § 7.11, 1995 Tex. Sess. Law Serv. 458, 580. Section 7.12 of the 1995 act repealed article 42.131.

related to the conflicts which might arise if a person were simultaneously to exercise the authority of both a peace officer and a community supervision officer, and not to depend on whether one or both positions is compensated. *See* Code Crim. Proc. art. 2.13 (duties and powers of peace officers).

Notably, prior to the addition of the provisions now in Government Code chapter 76, former section 10 of article 42.12 of the Code of Criminal Procedure provided that probation officers, as community supervision officers were formerly called, were subject to the parole officer disqualifications in former section 24 of article 42.18 (*see* Code Crim. Proc. art. 42.18, § 19), which in turn provided that “[n]o person serving as a sheriff” or other law enforcement officer “shall act as a parole officer.”² These provisions presumably made persons *serving* as law enforcement officers, whether or not for pay, ineligible to act as probation officers. We believe the same policy is evinced in the provision of Government Code section 76.005 that “[a] person employed as a peace officer is not eligible for appointment” as a community supervision officer. If the legislature had meant to confine the scope of the term as used in subsection (c) to employment for compensation, we think it would have more clearly indicated such intent.³

It might perhaps be argued that subsection (c)’s prohibition on the “appointment” as a community supervision officer of a person employed as a peace officer, does not work to prevent an already appointed community supervision officer from continuing to hold that position should he then be employed as a peace officer--that the prohibition covers only the department director’s “appointment” of a person already employed as a peace officer. Such reading would be at odds with the policy we perceive to be behind the prohibition, that of preventing conflicts, since the conflicts, or potential conflicts, would exist, if the positions were simultaneously held, regardless of the order in which the positions were taken. We think subsection (c) should be construed to mean that a person employed as a peace officer may not also *hold an appointment* as a community

²*See* Act of May 23, 1987, 70th Leg., R.S., ch. 1101, § 11, 1987 Tex. Gen. Laws 3750, 3761-64 (changing Code Crim. Proc. art. 42.18, § 24, to Code Crim. Proc. art. 42.18, § 22); Act of May 29, 1989, 71st Leg., R.S., ch. 785, §§ 3.02 (adding Code Crim. Proc. art. 42.131), 4.17 (repealing former § 10 of Code Crim. Proc. art. 42.12), 5.01 (changing Code Crim. Proc. art. 42.18, § 22, to Code Crim. Proc. art. 42.18, § 19(c)), 1989 Tex. Gen. Laws 3471, 3483-86, 3504, 3545; Act of April 25, 1995, 74th Leg., R.S., ch. 76, § 7.11, 1995 Tex. Sess. Law Serv. 458, 580-84 (transferring Code Crim. Proc. art. 42.131 provisions to Gov’t Code ch. 76).

³As one would expect, the requirement in Government Code chapter 415 that a person be licensed by TCLEOSE in order to be “appointed” a peace officer does not limit the coverage of the requirement to persons appointed to *compensated* peace officer positions. Gov’t Code § 415.051. *See also* 37 T.A.C. § 211.1 (“[a]ppointed” means “[e]lected or commissioned by an agency as a peace officer or reserve or otherwise selected or assigned to a position governed by the Government Code, Chapter 415, *without regard to pay or employment status*”) (emphasis added). Please note, however, that apart from our concluding that they may not employ a community supervision officer as an unpaid peace officer, we do not address here whether and under what circumstances agencies may employ unpaid peace officers.

supervision officer. Again, in our opinion, subsection (c) of section 76.005, Government Code, prohibits a person's simultaneously being employed as a peace officer, even if uncompensated for that position, and as a community supervision officer.

S U M M A R Y

Subsection (c) of section 76.005, Government Code, prohibits a person's simultaneous employment as a peace officer, even if uncompensated for that position, and as a community supervision officer.

Yours very truly,


Sarah J. Shirley
Chair, Opinion Committee